surance Co. v. *Colt*, 20 Wall. 560. It follows then that limitations upon the agent's powers contained in the policy cannot affect a contract previously entered into by the insured without knowledge of such limitations. *Lightbody* v. *Insurance Co.*, 23 Wend. (N. Y.) 18. Moreover if the policy is merely a reduction into written form of a valid oral contract previously made by the agent of the insurer, any misdescription of the terms of that contract, whether occurring through the mistake or fraud of the agent, will be rectified by a court of equity, and the insured may then recover upon the policy as amended. *Barnes* v. *Insurance Co.*, 75 Ia. 11. Most of the courts however have gone further, and in cases like that under consideration have allowed the insured to recover in an action at law upon the policy, holding the insurer estopped to set up in defence the stipulation avoiding liability. *Robbins* v. *Insurance Co.*, 149 N. Y. 477. The theory upon which an estoppel is raised would seem to be that the insurer through its agent has represented to the insured that the policy embodies their oral contract, and the insured relying upon that representation has paid his premium. This view raises the question whether the insured is justified in relying upon such a representation, a question admitting of a difference of opinion. The numerous and complicated provisions of such policies, the inexperience of the insured with legal forms, and the general custom to lay aside such papers without careful perusal, present an argument in support of the doctrine. On the other hand the danger of abuse and fraud and the prevalence of statutory forms of policies would tend towards the stricter rule holding the insured to constructive knowledge of the contents of these documents, and compelling him to first seek their reformation if he desires to escape their provisions. While the latter view would support the conclusion of the court in the principal case it is unfortunately not suggested. The force of the reasoning is weakened by the failure to distinguish between the policy as the contract of insurance, and as evidence of that contract, and between the rights of the insured before and after knowledge of the limitations upon the powers of the insurer's agent has been brought home to him.

THE MISSTATEMENT OF CONSIDERATION IN A DEED AS A BASIS FOR AN ACTION OF DECEIT. — At the present day the statement of consideration in a deed is not, so far as its accuracy is concerned, material. The fact that it is often, if not generally, grossly understated and that the public has learned to place no reliance on its truth has apparently led several courts into deciding that a false averment of consideration alone cannot give rise to an action of deceit. *Thorp* v. *Smith*, 51 Pac. Rep. 381 (Wash.); *Leonard* v. *Springer*, 34 Chic. Leg. News 121 (Ill.). In the latter case the defendant having only a lease of a building purported to convey the fee in consideration of $100,000; and procured his grantee to execute a deed of trust to secure an issue of notes. The plaintiff declared that she had purchased one of the notes relying on the averment of the consideration and had been damaged in consequence. The defendant demurred; and the demurrer was sustained on the ground that the public is not intended to rely on such statements.

It is hard to see how the case can be sustained. The declaration avers that the defendant made a statement knowing it to be false, that the plaintiff relied on it and was thereby damaged, and that the defend-

ant intended the result. The defence that the false statement was of an immaterial fact should not be valid, for while the amount of the consideration in most conveyances is of no moment, yet when an investment of money on the security of the land conveyed is thereby induced, the statement becomes distinctly material. See *Belcher* v. *Costello*, 122 Mass. 189. Though it is in general true that no one relies on the statements of the price paid, yet here the plaintiff did rely on it: and there is little force in the assertion that because most people are not misled, therefore one who is misled shall be barred from redress. In every case it remains a question of fact whether or not the plaintiff was actually deceived. Nor is it a valid excuse that the plaintiff was negligent in not examining the title to the property for herself. The damage was intentionally inflicted, and contributory negligence is no defence to an intentional tort. *Cottrill* v. *Krum*, 100 Mo. 397. In apparent contradiction are the many cases of "seller's talk." But it is conceived that these are to be distinguished as cases in which the plaintiff did not in fact rely and was not intended to rely on the statements made. One ground adopted in the principal case was that no representation was made by the defendant to the plaintiff. The law seems settled however, that if a representation be made to a class, or with intent to deceive a class, of which the plaintiff is one, no direct personal communication is necessary. *Bedford* v. *Bagshaw*, 4 H. & N. 538. It seems, upon analysis, that the decisions similar to that of the principal case are based upon remoteness. The injury is considered as not a natural and probable result of the defendant's act. Undoubtedly this argument appears sound to all who are familiar with the absolute meaninglessness of statements of consideration in conveyances. But here the statements were inserted purely to deceive. The result was intended; and the principle that an improbable consequence, if intended and desired has the same legal effect as though it had been the natural and probable one, is eminently applicable. See JAGGARD, TORTS, 382; POLLOCK, TORTS, 2d ed., 28.

MEASURE OF DAMAGES FOR INTERRUPTION OF A WATER RIGHT. — A case recently decided in Wisconsin, gives rise to some interesting considerations in the law of damages. The plaintiff was entitled to the use of the water power at a dam and the defendant appropriated it during a considerable period. Though the plaintiff suffered no actual damage he was allowed to recover, in an action of tort, the fair market value of the water during the period that the defendant had used it. *Green Bay, etc., Canal Co.* v. *Kaukaunee Water Power Co.*, 87 N. W. Rep. 864.

At first sight it would seem that the plaintiff should recover, in a tort action for the interruption of an incorporeal right, only for the damage he has suffered; that is, a nominal amount to establish his right, but no more unless he has sustained actual loss. In awarding damages, however, the generally acknowledged purpose is compensation, that is to restore to the plaintiff an equivalent for being deprived of some right. See SEDG., DAM., 8th ed., § 29 *et seq.* In whatever form the action be brought, it is believed this principle will apply. So in contract and trover the plaintiff is compensated for the right to certain property which the defendant has kept or taken from him, in personal actions of tort it is for the right to good health or reputation. In actions for interference with real pro-